IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 256 OF 1999
In
SPECIAL CIVIL APPLICATION NO. 7814 OF 1998
With
CIVIL APPLICATION NO. 1572 OF 1999
In
LETTERS PATENT APPEAL NO. 256 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT MAZDOOR SABHA - Appellant(s)

Versus

COMMISSIONER OF LABOUR & 4 - Respondent(s)

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Appearance :
MS. HIMALI M. DAVE for Appellant.
MR. MUKUL SINHA for Appellant.
MS. PAURAMI SHETH, AGP for Respondent No(s).: 1.
MR. NAVIN K. PAHWA for Respondent No(s).: 2.
MR. K.M. PATEL for Respondent No(s).: 2.
RULE SERVED for Respondent No(s).: 3,4.
DELETED for Respondent No(s).: 5.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 27/07/2005

COMMON ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Learned Counsel for the appellant, challenging the correctness, validity and propriety of the Order dated 5th February, 1999 passed in Special Civil Application No.7814 of 1998, submitted that violation of the labour's right to get the minimum wages if is treated to be a violation of fundamental rights and violation of rights enshrined under Article-23 of the Constitution of India, then, this Court must issue a writ under Article-226 of the Constitution of India irrespective of the fact that proper legal forums, authorities and Courts have been made available to the persons for raising their disputes before such authorities. Placing reliance upon the judgements of the Supreme Court viz. (i) People's Union for Democratic Rights & Ors. vs. Union of India & Ors. [AIR 1982 S.C. 1473]; (ii) Sanjit Roy vs. State of Rajasthan [(1983) 1 S.C.C. 525]; and, (iii) Bandhua Mukti Morgha vs. Union of India & Ors. [(1984) 3 S.C.C. 161], it was submitted that if the right to receive the minimum wages is a fundamental right and non-payment of the minimum wages tantamounts to violation of the fundamental right, then, a writ must be issued against every entrepreneur, employer, industrialist or so, who is employing the labour but is not making the payment of the minimum wages.

2. The appeal is contested by the other side.

3. True it is, that in the matter of People's Union for Democratic Rights (*supra*), the Supreme Court has observed that non-payment of the minimum wages amounts to violation of the fundamental rights, but, at the same time, it observed that it would also be for the State to take appropriate action against such erring Officers, whether they are private or departmental. In paragraph-17, while disposing of the Writ Application, it was observed by the Supreme Court that in case where the Government or the State, or the Government Corporations take work from the labour or get the labour from the contractor, then, their endeavour must be to see that the minimum wages are paid to them and no violations are made. However, the Supreme Court, even in the said matter, did not say that it would issue a writ against the employers or the contractors, but, simply required the State and its agencies to see that the minimum wages are paid. The Supreme Court had observed that the authorities must take great care to see that the provisions of the Labour Laws are being strictly observed and they should not wait for any compliant to be received from the workman in regard to non-observance of any such provisions before proceeding to take action against the erring Officers or contractors, but, they should institute an effective system of periodic inspections, coupled with occasional surprise inspections by the higher Officers, in order to ensure that there are no violations of the provisions of the Labour Laws and the

workmen are not denied the rights and the benefits, to which they are entitled under such provisions, and if any such violations are found, immediate action should be taken against the defaulting Officers or contractors.

4. From these observations made by the Supreme Court, it is clear that the Supreme Court, despite holding that non-payment of the minimum wages was amounting to violation of the fundamental rights, did not issue any writ against the erring contractors or the employers, but, simply required the State Government and its Officers to institute an effective system.

5. In our considered opinion, when the Labour Laws provide for a procedural forum, then, the same cannot be short-circuited simply because they are time consuming. Even otherwise, if we start entertaining such applications, then, any order made by us or any writ issued by us, would again lead to a problem. This Court, after issuing the writs, will have to act as a Labour Court for enforcing the writs, which, in fact, is not the intention of the Constitution of India.

6. When the law provides for a proper forum, then, any person, for redressal of his grievance, must approach to the said forum because the Officers are trained, they know how to handle the matters and the law further provides

that in what manner, such orders can be executed.

7. We refuse to interfere in the matter. The appeal deserves to be and is accordingly dismissed.

8. At this stage, Mr.Sinha, learned Senior Counsel for the appellant, submitted that the matters relating to the payment of the minimum wages take years together in the Labour Courts and the poor workmen have to succumb to the illegal demands made by the employer and have to, in fact, accept under payment, therefore, this Court should issue certain directions to such Labour Courts/Commissioners under the Payment of Minimum Wages Act to dispose of the matters at their earliest. It is submitted that the present matters, which were pending before the Labour Court, are still pending. His submission is that if the labour does not get his rights right in time, then, such non-payment would go contrary to the Constitution.

9. Taking into consideration the submissions made by the learned Counsel for the appellant, we can only issue a general direction to the Labour Court that in cases relating to the payment of minimum wages, endeavour of every Labour Court/Commissioner under the Payment of Minimum Wages Act should be to see that such matters are disposed of within a period of six months from the date of their institution and where the cases are repeated by the same

labour/employee/workman, then, such cases should always be decided as expeditiously as possible in light of the earlier judgements. We would also like to request the State Government to see that more of such Courts are created so that the workman/labour does not unnecessarily suffer. Minimum Wages Application Nos.51/1998, 52/1998 and 53/1998, which are pending before the Labour Court Ahmedabad, are directed to be disposed of by the concerned Court within a period of three months from the date of production of a copy of this judgement. It is made clear that the Labour Court shall not grant unnecessary adjournment to either of the parties.

10. In view of the above, the Civil Application stands disposed of. `Rule' and Notice as to interim relief are discharged.

[***R.S.Garg, J.***]

[***Ravi R.Tripathi, J.]***

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